IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ikliwar & Others Vs. State of Raj.
(D.B. Criminal Appeal No.1326/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 4-9-2003 in Sessions Case No.2/2003 passed by Shri Mohd. Anwar Ali, RHJS, Additional Sessions Judge (Fast Track) No.2 Baran Head Quarter Chhabra.

Date of Judgment: July 09, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. S.S.Hasan, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Out of 19 accused named in the FIR, only 7 were put to trial before the learned Additional Sessions Judge (Fast Track) No.2, Baran Head Quarter Chhabra, who vide judgment dated September 4, 2003 convicted and sentenced all the seven accused (appellants herein) as under:-

Ikliwar, Hanumant Singh, Raghuvir Singh, Bablu, Laxman, Bardha @ Subedar and Shivraj :

U/s.302/149 IPC:

Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer three months simple imprisonment.

U/s.148 IPC:

Each to suffer rigorous imprisonment for two years and fine of Rs.500/-, in default to further suffer one month simple imprisonment.

Shivraj & Laxman:
U/s.3/25 Arms Act:

Both to suffer rigorous imprisonment for three years and fine of Rs.300/-, in default to further suffer one month simple imprisonment.

Sentences were directed to run concurrently.

2. On December 24, 2000 at 3.45 PM informant Jai Hind son of Bhanwar Singh (Pw.15) submitted a written report (Ex.P-19) at Police Station Bapcha stating therein that on the said day around 1 PM while the informant and his family members were at home, Laxman, Shivraj, Bablu, Sumer Singh, Man Singh, Genda, Ikliwar, Hanumant Singh, Meharban Singh, Subedar, Kankan, Jaswant, Narayan, Kalandar, Lala Ram, Kamlesh, Hamira, Keshav and Raj Kumar armed with Guns, Gandasis, Ballam and Lathis came to their home and started hurling abuses. When the informant, Rambabu, Kunwar (deceased) and Jagdish made attempt to run away, they were surrounded. Laxman then opened fire that hit Kunwar as a result of which he sustained injuries. While Kunwar was taken to the Hospital in a Tractor, he died. On that report case under sections 147, 148, 149, 302 and 307 IPC was registered and investigation commenced. On completion of investigation charge sheet was filed only against seven appellants. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2, Baran Head Quarter Chhabra. Charges under sections 148, 302/149 and 302 IPC and 3/25 Arms Act were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 21 witnesses. In the explanation under section 313 Cr.P.C., the appellants claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Death of Kunwar Singh was homicidal in nature. As per postmortem report (Ex.P-1) following ante mortem injuries were found on the dead body :-

1. Fire arm wound 1 x ½ x ½ cm L.arm above elbow antromedial
2. Fire arm wound 1 x ½ x ½ cm L.arm middle 1/3rd antromedial
3. Fire arm wound 1 x ½ x ¼ cm L.arm proximal 1/3rd antromedial
4. Fire arm wound 1 x 1cm x ½ cm L.shoulder region antrodistal
5. Fire arm wound 1 x 1cm x ½ cm L.shoulder region on middle
6. Fire arm wound 1 x 1cm x ½ cm L.shoulder region proximal antro
7. Fire arm wound 1 x 1cm x ½ cm L.infra clavicular region
8. Fire arm wound 1 x 1cm x ½ cm L.infra clavicular region middle
9. Fire arm wound 1 x 1cm x ¼ cm L.Hypochondrium
10. Fire arm wound 1 x 1cm x ½ cm L.Hypochondrium
11. Fire arm wound 1 x 1cm x ½ cm L.umbilical region
12. Fire arm wound 1 x 1cm x ½ cm L.lumber region
13. Fire arm wound 1 x 1cm x ½ cm below xipid process
14. Fire arm wound 1½ x 1 cm L. 6th inter costal space

Dr. K.B.Sharma (PW.1) who performed autopsy on the dead body opined that the cause of death was syncop as a result of excessive blood loss.

4. We have heard rival submissions and scrutinised the evidence adduced at the trial. Ghasilal (PW.6), Kalu Ram (PW.10) and Dolia (PW.16) who were examined as eye witnesses did not support the prosecution case and they were declared hostile. Ram Babu (PW.8) however deposed that Laxman and Shivraj opened fire that hit Kunwar and

as a result of Gun shot injuires, Kunawar died. He further stated that Gainda, Sumer Singh, Man Singh and Bablu opened fire at him. In his cross examination Ram Babu admitted that deceased Kunwar was his nephew. He denied this suggestion that Jagdish Chand Kunwar opened fire at him. Testimony of Ram Babu gets corroboraton from the evidence of Chandan Singh (PW.11) who is also near relative of deceased Kunwar. He admitted that " कुंवर सिंह मेरे साले का लडका है" The prosecution story also finds support from the testimony of Jagdish (PW.14), Jai Hind father of deceased (PW.15) and Dolya (PW.16).

5. However evidence of Ramesh Chand (PW.4) another eye witness examined by the prosecution, gives support to defence version. According to him Laxman, Shiv Raj and other accused had lathies and Jagdish had a gun who was asking to stop and threatening to open fire -

> लक्ष्मण, शिवराज, हनुमान तथा तीन चार और थे। इन सभी के हाथों में लाठियां थी। जगदीश के पास कटटा था.... जगदीश ने कहा कि रूक जाओ नहीं तो गोली मार दूंगा, तो कुंवर उस समय उसे रोकने लगा था। कुंवर पीछे मुडा था। उसके पीछे मुडते ही गोली चल गई थी....।

Ramesh Chand although did not support prosecution case, was not declared hostile. Testimony of Ramesh Chand thus binds prosecution and defence can utilize it to make dent in prosecution case (vide Raja Ram Vs. State of Rajasthan (2005) SCC (Cri) 1050).

6. Fact situation that emerges from the material on record may be

summarised thus -

(i) As many as 19 assailants were named in the FIR but the I.O.did not involve twelve and filed charge sheet only against seven assailants. No reason however was assigned as to why only seven accused were implicated.

(ii) Independent eye witnesses examined by the prosecution categorically deposed that it was Jagdish who opened fire at Kunwar and killed him. They were however declared hostile.

(iii) Ramesh Chand (PW.4) deposed that the accused appellants had lathis but no injury with blunt weapon was found on the person of the deceased.

(iv) Rames Chand also stated that Jagdish had gun and he threatened Kunwar to stop. As soon as Kunwar turned gun got fired.

(v) Cause of death of Kunwar was syncop as a result of excessive blood loss. Kunwar received as many as 16 fire arm wounds.

7. Since Ramesh did not attribute gun shot injuries to appellants we are of the view that guilt against the appellants could not be established beyond reasonable doubt. On examining the testimony of Ram Babu (PW.8) Chandan Singh (PW.11), Jagdish (PW.14), Jai Hind (PW.15) and Dolya (PW.16) from the point of view of trustworthiness we find it highly unreliable and untruthful.

8. For the reasons aforementioned, we allow the appeal and set aside the impugned judgment dated September 4, 2003 of learned Additional Sessions Judge (Fast Track) No.2, Baran Head Quarter Chhabra. We acquit the appellants Ikliwar, Hanumant Singh, Raghuvir Singh, Bablu, Laxman, Bardha @ Subedar and Shivraj of the charges under sections 148 and 302/149 IPC and 3/25 Arms Act. The appellants Ikliwar, Hanumant Singh, Raghuvir Singh, Bablu and Bardha @ Subedar are on bail, they need not surrender and their bail bonds stand discharged. Appellants Laxman and Shivraj, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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